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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181994
Party	Defendant First SBF Holding, Inc.
Correspondence Address	Aimee Nassau Gardiner Fitzpatrick, Cella, Harper & Scinto 30 Rockefeller Plaza, Floor 38 New York, NY 10112-3800 UNITED STATES
Submission	Answer and Counterclaim
Filer's Name	Joel Weiss
Filer's e-mail	jweiss@weissarons.com
Signature	/Joel Weiss/
Date	02/15/2008
Attachments	106-005Swiss Military Calibre Opp Answer and Counterclaim.pdf (4 pages) (105860 bytes)

Registrations Subject to Cancellation

Registration No	3047277	Registration date	01/24/2006
Registrant	Federation Of The Swiss Watch Industry Rue d' Argent 6 CH-2501 Bienne, SWITZERLAND		
Goods/Services Subject to Cancellation	Class A. First Use: 1931/00/00 , First Use In Commerce: 1931/00/00 Goods/Services:		
Registration No	3038819	Registration date	01/10/2006
Registrant	Federation of the Swiss Watch Industry Rue d' Argent 6 CH-2501 Bienne, SWITZERLAND		
Goods/Services Subject to Cancellation	Class A. First Use: 1931/00/00 , First Use In Commerce: 1931/00/00 Goods/Services:		

**FEDERATION OF THE SWISS
WATCH INDUSTRY,**

V.

Applicant.

ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM

With respect to the numbered paragraphs, First SBF responds as follows:

1. First SBF is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1, and therefore denies the same.
2. First SBF is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2, and therefore denies the same.
3. First SBF is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3, and therefore denies the same.
4. First SBF is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4, and therefore denies the same.
5. First SBF admits the allegations of paragraph 5.

6. First SBF denies the allegations of paragraph 6, except that First SBF admits the allegation of the first sentence of that paragraph, namely that First SBF is a corporation organized and existing under the laws of New York.

7. First SBF is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7, and therefore denies the same.

8. First SBF denies the allegations of paragraph 8.

9. First SBF denies the allegations of paragraph 9.

10. First SBF denies the allegations of paragraph 10.

11. First SBF denies the allegations of paragraph 11.

First Affirmative Defense

12. Opposer's claims are barred for failure to state a claim upon which relief may be granted.

Second Affirmative Defense

13. Opposer Federation of the Swiss Watch Industry ("Federation"), is the current owner of Registration 3047277 (Jan 24, 2006) for the Certification Mark SWISS and Registration 3038819 (Jan. 10, 2006) for the Certification Mark SWISS MADE (together, the "Federation Marks").

14. As discussed below, Opposer committed fraud in obtaining the Federation Marks.

15. Opposer's claims are barred by the doctrine of unclean hands.

COUNTERCLAIM FOR CANCELLATION OF OPPOSER'S MARKS

16. Applicant First SBF believes it is being damaged by the Federation Marks, and petitions for the cancellation of same. The grounds for registration are as follow.

17. Opposer intentionally misstated or failed to state that it is not a government, one of the departments of a government, or a body operating with governmental authorization pursuant to section 1306.02 of the Trademark Manual of Examining Procedure.

18. Opposer's registrations were obtained fraudulently.

19. Opposer has no authority to control the use of the terms SWISS or SWISS MADE.

20. Opposer has improperly permitted and encouraged use of SWISS and SWISS MADE marks for purposes other than to certify.

21. Opposer discriminates in the granting of use of the certification marks.

22. The terms SWISS and SWISS MADE cannot function as certification marks due to these terms having become generic for horological and chronometric instruments.

WHEREFORE, Applicant prays that judgment be entered dismissing the Notice of Opposition herein, and that a judgment or order be entered canceling the Federation Marks.

Dated: February 15, 2008

Respectfully Submitted,

/s/Joel Weiss, Esq./

Joel Weiss

Edward M. Arons

Weiss & Arons, LLP

1540 Route 202

Suite 8

Pomona, NY 10970

Attorneys for Applicant

First SBF Holding, Inc.